GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour dispute.—Industrial dispute between the workmen and the Management of Hebbalbhagad Doddapramanada Prathamic Pattin Vyavasaya Sahakari Sangh Niyamit, Hebbal, Taluk Shirahatti, District Dharwar.

Award of the Presiding Officer, Labour Court, Hubli, published.

Read the following papers.

(1) Letter No. LCH-34/75-76, dated 2nd April 1975 from Sri H. L. Narayanagowda, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT AT HUBLI

Reference ID LCH Claim No. 13/1974

PRESENT :

Sri H. L. Narayanagowda, B.A., LL.B.

Presiding Officer

Date : 2nd April 1975

Claimant :

Sri S. V. Kashimath of Hebbal, Taluk Shirahatti, District Dharwar.

(By Sri P. G. Wadikar)

Respondent :

The Management of Hebbalbhagad Doddapramanada Prathamic Pattin Vyavasaya Sahakari Sangh Niyamit, Hebbal, Taluk Shirahatti, District Dharwar.

(By Sri G. B. Muttur Advocate)

Order No. SWL 881 LLD 73, dated 22nd January 1974

JUDGEMENT AND AWARD

The Government of Karnataka have made this reference under clause (c) of sub-section (1) of Section 10 of the I.D. Act 1947 (Central Act 14 of 1947) referring the

dispute between Sri S. V. Kashimath, Ex-Assistant Secretary, Hebbalabhagad Doddapramanada Prathamic Vyavasaya Sahakari Sangh, Niyamit, Hebbal and the Management of Hebbalabhagad Doddapramanada Prathamik Vyavasaya Sahakari Sangh Niyamit, Hebbal for adjudication to this Court on the following points of dispute.

"Are the Management of Hebbalabhagad Doddapramanada Prathamic Vyavasaya Sahakari Sangh Niyamit, Hebbal post, Taluk Shirahatti, justified in terminating the services of Sri S. V. Kashimath, Assistant Secretary of the Society from 15th January 1972 ?

If not, what relief the worker is entitled to ?"

2. The claimant in his claim statement states as follows :

The claimant was appointed as Assistant Secretary on 1st June 1963 temporarily and he was confirmed on 30th September 1963. He was sent to Co-operative Secretary training by the Respondent. The claimant was receiving his pay at Rs. 65 p.m. as on 1st January 1972. He was serving efficiently and honestly till the date of his termination on the ground that the Co-operative Society was running in loss. It is very clear that the society is in progress since 1963. The service book of the claimant will prove that the claimant was honest and efficient. On 15th January 1972 the Management abruptly terminated the services of the claimant and Sri H. H. Patil clerk who was again reappointed in the service of the said society. But the claimant was not appointed or reinstated. After the termination order of the claimant was approached the Assistant Registrar of co-operative societies and he passed the order in the favour of the claimant. The Management appealed to the Co-operative tribunal and the co-operative tribunal quashed the order of the arbitrator on the ground that this dispute will not come under section 70 of the Mysore Co-operative Societies Act 1959 in view of the decision reported in AIR 1969 SC 1320 and AIR 1970 SC

245 and 1972 (2) Mys. L.J. 327. Therefore the applicant was forced to raise an Industrial dispute and the conciliation proceedings were ended in failure. The claimant was the permanent Assistant Secretary. Before the terminating the service the Management did not follow the procedure of Natural justice. The order of the Management is clear that the services of the claimant which were terminated amounts to the retrenchment. Before retrenchment the Management did not follow the procedure as laid down in the I.D. Act 1947. Therefore the claimant prays that this court to set aside the termination order of the Management and he should be reinstated in service with full back wages and continuity of service and cost of the arbitration amounting to Rs. 330 spent by the claimant.

3. The Respondent in its written statement pleads as follows :

The claimant's services had to be terminated since the Respondent society was running in loss and the financial position of the society was not sound. The termination of the claimants service was for a *bona fide* and valid reason. Hence the claimant is not entitled for re-instatement with back wages. This respondent does not agree that the claimant is entitled to reinstatement with back wages. The claimant does not come under the definition of " worker " as defined in the I.D. Act. He was working as Assistant Secretary. The post is neither clerical nor a post involving manual labour. Hence the claim petition is not tenable in law. Hence this reference cannot be entertained for want of jurisdiction. Moreover the dispute being a dispute touching the constitution, Management and business of the society, such a dispute cannot be entertained by the Labour Court for want of jurisdiction. The claim put forth by the claimant is barred by limitation and his claim statement deserves to be rejected. The termination of the claimant's services being valid in law he is not entitled for reinstatement with back wages. He is also not entitled for any other relief. His claim petition deserves to be rejected.

4. In support of its case the Respondent has examined its Chairman Sri Malleshappa Mundawad as MW-1 and has closed. Ex. M-1 to M-8(a) are the document filed for it. The claimant has examined himself as WW-1 and has closed. Ex. W-1 to W-7 are the documents filed for him.

5. I have perused the records and heard Sri P. G. Wadikar learned representative for the claimant and Sri G. B. Muttur, learned advocate for the Respondent.

6. The Chairman of the Respondent Sri Malleshappa Mundwad MW-1 has stated that he is the Chairman of the Respondent society since 3 years. The claimant was working as Assistant Secretary in their society. They terminated his services from 15th January 1972. They terminated the services of the claimant because the society had no sufficient work and also it had incurred losses. Ex. M-1 is the copy of profit and loss account for the year 1971-72. Ex. M-1(a) is the relevant entry. Ex. M-2 is the copy of the profit and loss account for the year 1972-73. Ex. M-2(a) is the relevant entry. In Ex. M-2(a) it is shown that the society has made a profit of Rs. 2925-78. But this profit was not earned in business. The society had incurred a loss to the extent of Rs. 8875-71. During this year they received a subsidy of Rs. 3,125-00 from the Government. As they have taken to the credit side, there is surplus. As a matter of fact, the society has earned no profit in the business. It is not true that the society has incurred no loss. They have appointed another person as Assistant Secretary from March 1973. They terminated his services on 5th December 1973. Ex. M-3 is the letter dated 21st February 1973 received from the Chairman, Pool Committee, Dharwar District KCC Bank Dharwar. They had no necessity of Assistant Secretary, but as the pool insisted that they should take a person, as Assistant Secretary, they appointed in 1973. 75 per cent of his pay was being paid by the Pool Committee. They wrote a letter to the Pool Committee that there was no sufficient

work and that the services of an Assistant Secretary were not necessary. The Office copy of the letter dated 7th December 1973 is Ex. M-4. After writing the original of Ex. M-4 they terminated the services of the Assistant Secretary. It is not true that the claimant was a permanent employee of their society. Ex. M-5 are the proceedings book of their society starting from March 1956. Ex. M-5(a) is the resolution dated 30th June 1963. Ex. M-5(a) is written by a different person. The rest of the entries are written by another person. The claimant has written Ex. M-5(a). The subject of Ex. M-5(a) is not to be found in the Agenda, mentioned in Managing Committee proceedings book Ex. M-6. Ex. M-6 (a) is the Agenda dated 9th September 1963. It is true that the resolutions of previous year are confirmed in General body meeting. The proceedings of the General body are sent to the Co-operative Department and also to K.C.C. Bank. Ex. M-7 is the certified copy of proceedings of the general body for the year ended 30th June 1963. The resolution No. 5 in Ex. M-5 viz. Ex. M-5(a) is not to be found in certified copy Ex. M-7. It seems to him that Ex. M-5(a) is a letter insertion. Ex. M-5 (a) has been written by the claimant subsequently. This resolution Ex. M-5 (a) was not passed at the meeting. Ex. M-8 is the proceedings book of the Manaying Committee starting from 16th July 1966. Ex. M-8(a) is the resolution, dated 3rd February 1969 Ex. M-8(a) has been passed under the impression that the General body resolution Ex. M-5(a) was a genuine one. It is not true that the claimant was a permanent employee of the Respondent society.

7. In cross-examination he states that since 3 years he is the Chairman. He was not Chairman completely for 1973-74. He was Chairman for some time during that year. He was not Chairman at the time of passing Ex. M-5(a). He was not President when Ex. M-5(a) was passed. It is true that the Secretary has signed. It may be that the Chairman and the Secretary have signed the proceeding book Ex. M-5. He came to know about

the later insertion of Ex. M-5(*a*) after 10 years. They did not issue any notice to the claimant for inserting Ex. M-5(*a*). He did not enquire the then President about the matter. He do not know whether the Assistant Registrar has approved the appointment of the claimant. Ex. W-3 is the certified copy of the resolution, dated 3rd February 1969. Ex. W-4 is the certified copy of the approval of the Assistant Registrar about the appointment of claimant, dated 24th February 1969. It is true that they terminated the services of the claimant because there was loss in their business. They have removed 2 employees, *viz.*, the claimant and one Hejjegowda Patil. It is true that Hejjegowda was reinstated. The pay of Hejjegowda is Rs. 65. The pay of the claimant was Rs. 60. They did not reappoint the claimant. They did not issue any notice to the claimant when his services were terminated they did not pay retrenchment compensation to the claimant. It is true that after termination the claimant approached the Assistant Registrar for arbitration. There was an arbitration case. It is true that the arbitrator decided that the claimant should be reinstated in service with full back wages. Ex. W-5 is the certified copy of the arbitration award. They filed an appeal to the Co-Op;. Appellate Tribunal against the decision of the arbitrator. It is true that the appellate Tribunal was held that the arbitrator had no powers to order reinstatement. Ex. W-6 is the certified copy of the judgement of the Co-op. Appellate Tribunal dated 3rd February 1973.

8. In Re-Examination he states that Hejjegowda was working as clerk. The claimant was working as Assistant Secretary. Sri Hejjegowda was reappointed for collection work. Subsequently he worked only for 4 or 5 months. They appointed clerk only as temporary servant for collection work.

9. The claimant as WW-1 has stated that he was appointed in the Respondent society as Assistant Secretary on monthly pay of Rs. 25 he was appointed on 1st June

1963. He was confirmed on 30th September 1963. He was written all resolutions in Ex. M-5 except first subject. The Secretary has signed all the resolutions. The Presidnet has also signed Ex. M-5. These resolutions were read over in the following year in general body meeting. When the resolution under Ex. M-5(*a*) was read in the general body meeting no body objected. Subsequently other meetings have taken place. They have sent true copies of the resolution to the Assistant Registrar of co-operative societies. They have not sent the resolution under Ex. M-5(*a*) to the K.C.C. Bank because it relates to employees of the Respondent. So it is not included in Ex. M-7. On 24th February 1969 the Registrar approved his appointment. Then he had been deputed for training by the Respondent. The Respondent bore his expenses on 31st January 1971 provident Fund scheme was introduced. His contribution to the Provident Fund was deducted in his pay. Ex. W-7 is the receipt for having deducted the his contribution to the Provident Fund dated 1st January 1972. The Respondent Society is under loss at present because their area was affected by draught and the members would not repay their loans. This is only a temporary loss. If the loans are recovered the society will again be on profit side. Himself and Sri H. H. Patil were removed from service. On account of their being surplus. No notice was issued to him before his services were terminated. He was not paid retrenchment compensation. He is not paid salary for 15 days within 3 or 4 months Sri H. H. Patil was reinstated. But he was not reinstated. The Respondent did not call him for reinstatement. Sri H. H. Patil is now drawing Rs. 85 he was getting a salary of Rs. 65. The Respondent did not take the permission of the Assistant Engineer before his services were terminated. After his services were terminated he made an application to the Assistant Registrar. The arbitrator decided that he should be reinstated in service with full back wages and cost of the proceedings. The Respondent filed an appeal to the Co-operative Appellate Tribunal, Bangalore against

the award of the arbitrator. The Co-operative Tribunal allowed the appeal of the Respondent. Then he raised an Industrial dispute and he has come to this Court. His services were terminated because of Political reasons. He pays that he may be reinstated in service with full back wages and continuity of service and costs.

10. In cross-examination he states that it is true that he was appointed in June 1963. It may be that he had been appointed some 8 or 10 years prior to his appointment. He do not know whether his appointment was temporary. It is true that his appointment and the appointment of Secretary were sent for approval at one time. They write resolutions according to the agenda. Resolution are written in minutes book according to the subject numbers in the Agenda. The subject number 5 in Ex. M 6(*a*) is not to be found in Ex. M-5(a). It is true that he has corrected the original resolution No. 5 or 6 as per Ex. M-5(b). It is true that he has corrected other resolutions and he has initialled. It is not true that after some years he has inserted that resolution under Ex. M-5(a). It is not true that thinking that a resolution had been passed the Respondent recommended his name to the Assistant Registrar for approval. It is not true that he has not been confirmed legally. He worked in the Respondent society for 9 years. It is true that the society was under loss when services were terminated. It is true that Sri H. H. Patil was taken as clerk. He do not know whether he was taken back on temporary basis. It is true that his services were terminated because of the financial condition of the society.

11. There can not be any valid objection on the part of the Respondent for reinstatement of the claimant in service. During the evidence stage the Respondent has developed a case stating that the claimant has inserted Ex. M-5(a) resolution in the resolution book Ex. M-5, with regard to his appointment. He has not been validly appointed and he has not been validly confirmed. It is

true that the resolution No. 5 in Ex. M-5 *i.e.*, Ex. M-5(a) is not to be found in Ex. M-7. But the Respondent should not take the claimant by surprise regarding this part of its case. It ought to have pleaded in the written statement, then the claimant would have been able to reply and would have taken steps to meet its case. Now the claimant is denied the opportunity of meeting the Respondent's case about later insertion of Ex. M-5(a) and also about the Respondent case that the claimant is not validly appointed and his appointment is not validly confirmed. So I do not propose to go into the objection of the Respondent the claimant has inserted Ex. M-5(a) and on that account he should not be reinstated. The claimant has worked for 9 years. Admittedly, even according to the Respondent his services have been terminated because of financial conditions of the society. The Respondent has suggested in cross examination of the caimant that his services were terminated because of the financial condition of the society. So only point to be considered is whether the claimant should not be reinstated because the financial condition of the society is bad.

12. It is to be noted that both the claimant and one Sri H. H. Patil were sent out together. But Sri H. H. Patil has been taken back by the Respondent society. It is true that he has been taken as clerk. But still there is reinstatement of Sri H. H. Patil. There is no reason why the claimant should not be reinstated in service. I propose to order his reinstatement. I will not allow back wages.

AWARD

13. I order that the Respondent should reinstate the claimant in service. No back wages are allowed. Continuity of service is allowed. No costs.

(Dictated to the Stenographer, transcribed and typed by him and corrected by me).

Sd./-

Hubli,
2nd April 1975.

H. L. Narayanagowda,
Presiding Officer,
Labour Court, Hubli.

"True Copy"
H. L. Narayanagowda,
Presiding Officer,
Labour Court, Hubli.

Order No. SWL 98 LLA 75,

Bangalore, dated the 14th April, 1975

S.O. **1180**.—WHEREAS by State Government Order No. SWL 881 LLD 73, dated 23rd January 1974 the industrial dispute between the workmen and the Management of Hebbalbhagad Doddapramanada Prathamic Pattin Vyavasaya Sahakari Sangh Niyamith, Hebbal, Taluk Shirahatti, District Dharwar, was referred to the Labour Court, Hubli, for adjudication.

AND WHEREAS the Labour Court, Hubli has submitted to the State Government its award in respect of the said industrial dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.